

REMARKS

In response to the Office Action mailed 5/07/03, the applicants elect invention I, with traverse, for further prosecution.

Further, the applicants respectfully submit that the Examiner has erred in requiring an election between inventions I and II, under 35 U.S.C. 121. In this regard, the applicants respectfully submit that the Examiner has failed to demonstrate that inventions I and II are independent and distinct.

The Examiner has stated that:

“Inventions I and II are related as combination and subcombination . . . In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the X-ray system does not require the plenum. The subcombination has separate utility such as a method of source cooling.”

(pg. 2, Office Action, 05/07/03)

According to MPEP § 806.05(a) “a combination is an organization of which a subcombination or element is a part.”

The Examiner regards invention I (claim 45) as the combination. Thus, the combination includes the following elements:

a base frame . . . ;
tunneling . . . ;
an x-ray source . . . ;
paneling . . . ; and
a fan . . .

From the above quoted definition of a combination, it will be seen that for invention II to be a proper subcombination of invention I, then the elements of invention II

must form part of the elements of invention I. However, invention II, as per independent claim 45, includes the following elements:

- a support frame . . .;
- a CT scanner subsystem . . .;
- a plenum . . .; and
- a fan . . .

Since the CT scanner subsystem and the plenum of invention II do not form part of invention I, it is incorrect to classify inventions I and II as combination and subcombination, respectively,

Hence, inventions I and II, are not properly classified as combination and subcombination, respectively. Further, even if inventions I and II are properly classified as combination and subcombination, respectively, the Examiner has failed to advance reasons for insisting on restriction such as separate classification, status, or field of search. In this regard, the Examiner has nearly alleged that inventions I and II “are distinct for the reasons given above and they have acquired a separate status in the art as shown by their different classification.” In this regard, the applicants respectively point out that both inventions I and II are drawn to an x-ray technique nonintrusive inspection apparatus, and as such, both inventions I and II share the same classification. Thus, the field of search for inventions I and II are the same.

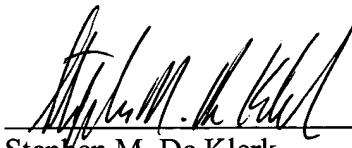
In conclusion, it is respectfully submitted, that because the Examiner misclassified inventions I and II as combination, subcombination, respectively, the Examiner has concluded, improperly, that restriction in the present case is proper. However, the applicants have demonstrated above, that restriction is not proper and accordingly, the Examiner is respectfully requested to withdraw the restriction requirement.

Please charge any shortages or credit any overages to Deposit Account No. 02-2666.

Respectfully submitted,

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Dated: ^{6/2/03}
~~6/3/0~~ 



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